87-218

No. _____

Supreme Court, U.S.
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CLERK

In The

Supreme Court of the United States

October Term, 1986

—o—

IDA YEITER, a legally incapacitated person, by and through her guardian, GERALD S. YEITER,

Plaintiff-Appellant,

vs.

OTIS R. BOWEN, Secretary of Health & Human Services,

Defendant-Appellee.

—o—

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

—o—

PETITION FOR WRIT OF CERTIORARI

—o—

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QUESTIONS PRESENTED

I. DID CONGRESS INTEND THE APPLICATION PROCESS FOR DISABILITY BENEFITS TO RESULT IN DENIAL OF SUCH BENEFITS TO THOSE WHOSE DISABILITY PREVENTED THEM FROM FILING A TIMELY APPLICATION?

II. DID CONGRESS INTEND THE APPLICATION PROCESS FOR DISABILITY BENEFITS TO RESULT IN DENIAL OF SUCH BENEFITS TO THE MENTALLY DISABLED DUE TO THEIR GUARDIAN'S FAILURE TO FILE A TIMELY APPLICATION?

III. MAY CONGRESS, CONSISTENT WITH CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION, CONDITION RECEIPT OF DISABILITY BENEFITS UPON WRITTEN APPLICATION, WHERE SUCH CONDITION EFFECTIVELY OPERATES TO EXCLUDE THE MENTALLY DISABLED?

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Ida B. Yeiter, a legally incapacitated person, by and through her guardian, Gerald S. Yeiter, respectfully requests this Court to grant the Petition for Writ of Certiorari, seeking review of the Court of Appeals' Opinion.

———o———

OPINIONS AND JUDGMENTS DELIVERED BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported and is printed in Appendix A hereto, infra, pages 1-6. The judgment of the United States District Court for the Western District of Michigan, Southern Division, is printed in Appendix A hereto, infra, pages 6-12.

———o———

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (Appendix A, infra, pages 1-6), was entered on May 6, 1987. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1).

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner challenges the constitutionality of the Social Security Disability Act; i.e., 42 U.S.C. § 423(b). Specific-

ally, petitioner argues that her rights to due process and equal protection as protected by the Fifth Amendment of the Constitution of the United States have been violated.

———o———

STATEMENT OF CASE

This appeal by Petitioner Ida Yeiter concerns a mentally disabled wage earner and her right to Social Security Disability Benefits. Disabled continuously since 1972, Respondent Secretary of Health and Human Services has limited benefits to the period from August 1982 to the present. (Appendix 16-18) The Secretary's basis for denial of benefits retroactive to the date of Ida Yeiter's injury is simply that she failed to *apply* for benefits in 1972. (Appendix 26, ¶8 & 32, ¶1) Her failure to apply, however, arose from the nature of her disability; i.e., complete mental incompetency. Nonetheless, the Secretary maintains that denial of benefits to those who cannot apply or complete written applications was both intended by Congress and constitutionally permissible. This appeal challenges that position.

A tragic automobile accident occurred on November 14, 1972. Petitioner Ida Yeiter, then age 53, was its victim. (Appendix 26, ¶9 & 32, ¶1) Ida suffered such severe injuries, including frontal lobe damage to her brain, that she was rendered comatose for a period of over one year, and thereafter remained for several years under the immediate care of 24-hour-round-the-clock nursing. (Appendix 26, ¶9 & 32, ¶1) She never recovered her former good health and intellect. She remains, to this day, a legally in-

capacitated person, in a stroke-like condition, her intellect severely limited, her personality grossly neurotic, and without full control of her motor skills, such as speech and walk. From the date of her accident to the present, Ida Yeiter has been and remains a legally incapacitated person, incapable of acting in her behalf, and incapable of directing others to act in her place. The government, in answer to Petitioner's complaint before the United States District Court, admitted the truth of this crucial fact. (Appendix 26, ¶9 & 32, ¶1)

Small wonder, then, that Ida B. Yeiter neither applied for Social Security Disability Benefits nor directed someone else to initiate, on her behalf, the disability application process. This inability to apply necessarily arose from the nature of her disability. It was and remains inherently impossible for Ida to comply with the procedural requirement of a written benefits application.

Not until August 31, 1983, did Ida's court-appointed guardian, Gerald S. Yeiter, file the initial application for Ida's disability benefits. The guardian's failure to file lay in his misunderstanding and ignorance of Ida's entitlement to Social Security Disability Benefits.

The Secretary admits that Ida was continuously and uninterruptedly disabled from November 14, 1972 to the present date, but, pursuant to § 223(b) of the Social Security Act, 42 U.S.C. § 423(b), limits her award of Social Security Disability Benefits to a period retroactive to August, 1982. (Appendix 26, ¶7 & 32, ¶1) This section provides, in relevant part, that an individual who would have been entitled to a disability insurance benefit for any month shall be entitled to such benefit if an application is filed before the end of the twelfth month immediately preceding

such month. Essentially it is a one-year limitation on awarding benefits retroactively. (Appendix 21)

In short, the Secretary admits that Ida is otherwise entitled to Social Security Disability Benefits dating back to November 14, 1972 and is being denied retroactive benefits only because of her failure (or that of her Guardian) to have filed a timely application for such benefits consistent with the provisions set out in § 223(b) of the Act. (Appendix 26, ¶9 & 32, ¶1)

———o———

REASONS FOR GRANTING THE WRIT

I. There Are Special And Important Reasons For This Honorable Court To Grant Writ of Certiorari

This case warrants review inasmuch as the Appellate Court's decision seriously offends the intent of Congress when enacting the Social Security Disability Act as well as Fifth Amendment rights of due process and equal protection afforded the mentally disabled. Viewed narrowly, the decision under appeal seriously limits a mentally disableds' access to Social Security Disability benefits.

The Social Security provision in dispute contains no express language demonstrating that Congress intended to place a procedural barrier between the mentally disabled and disability benefits to which they are otherwise entitled. Indeed, there is no evidence to be found within the legislative history demonstrating that Congress expressly considered and adopted the position of the Appellate Court and Respondent Secretary that legally incapacitated, mentally disabled persons are nonetheless obligated to participate in the administrative entitlement procedures in the same manner and under the same constraints as mentally abled disability benefit applicants. In short, the Appel-

late Court's decision establishes a procedural requirement which the mentally disabled are inherently incapable of satisfying.

There is no question but that Congress intended the Social Security Act to be remedial, humanitarian legislation whose ultimate objective was to ameliorate the harshness of a wage earner's disability. *Williams v. Califano,* 590 F.2d 1332, 1334 (Fifth Cir. 1979). Moreover, it is generally accepted that it was not the intention of Congress to have the Secretary create inflexible formulae for the determination of disability within the meaning of the Act, for to be inflexible would bring about harsh and inequitable results. *Kohrs v. Fleming,* 272 F.2d 731 (Eighth Cir. 1959).

Thus, allowed to stand, the Appellate Court's decision and Secretary's position threatens to turn upside down, in Lewis Carroll fashion, the congressional objective of enacting humanitarian and remedial social welfare legislation. Those most in need are least protected.

Ida's appeal must be seen in its full context. It represents more than Ida's interests in her disability benefits retroactive to 1972. Instead, Ida's appeal presents this Court with the opportunity to fashion judicial relief appropriate to a class of persons rarely able to impact on the legislative process. Put differently, the class to which Ida Yeiter belongs, the mentally and legally disabled, is a politically disenfranchised group historically required to seek solace and relief within the halls of this and other courts throughout our nation. So abused are those so silent.

The relative importance of this case is also underscored in that the United States Court of Appeals for the Sixth Circuit recommended its decision for full text publication.

(Appendix 1) Thus, its holding will be established not only with respect to courts within the Sixth Circuit, but will serve as guidance to federal courts throughout the United States.

Petitioner prays that this Court will not permit inadvertent congressional silence to perform serious damage to the rights of the mentally disabled through the Secretary's rigid and inflexible interpretation of the law. Most administrative harm to the mentally disabled is done in this fashion—not through malice but through neglect. Accordingly, important questions of federal constitutional and statutory law are presented which have not been, but should be, resolved by this Court.

II. The Court Of Appeals Erred In Its Ruling

Petitioner argued below that Congress failed to form an intent as to whether or not the requirement of a written application as a condition to entitlement to disability benefits applied to the mentally disabled. Given, however, the clear expression of Congress that the ultimate objective of the Act was to ameliorate the harshness of a wage earner's disability, Petitioner submitted that an implied exception existed for those, such as Ida Yeiter, who were inherently incapable of satisfying the procedural requirement.

The Court of Appeals resolved this issue by tautology in reasoning that *because the Act makes no mention of an exception* for the mentally disabled, *no exception was intended.* Petitioner prays that this Court will recognize the historical role of the judiciary in discerning and interpreting the spirit and intent of the legislature when applying laws to factual circumstances never considered during passage. Congressional silence "establishes" inattention to the plight and circumstance of the mentally disabled, and nothing more.

Historically, courts have given general welfare legislation a liberal construction so as to ensure the accomplishment of its beneficient objections. Sutherland, Statutory Construction § 58.04 (Fourth Edition). Accordingly, it is well established that the literal sense of terminology cannot prevail over the reason and spirit of the expression as a whole. Further, since the statute is passed as a whole and not in parts, each part must be construed in connection with the general purpose of the statute, in this case, the remedial purpose of providing a safety net for those who can no longer work.

Here, it is inconceivable that Congress intended the procedural niceties of this remedial, humanitarian Act to be used to *deny* benefits to those it was enacted to protect. It is equally inconceivable that Congress intended such legislation to direct the Department of Health and Human Services to measure or hold hostage the benefits of mentally disabled persons due to the acts and omissions of their court-appointed guardians.

Indeed, the Fourth Circuit rejected such a similar argument for literal interpretation in similar circumstances regarding the statutorily established 60-day time limit for appealing the Social Security Disability decisions. In *Shrader v. Harris,* 631 F.2d 297, 301 (Fourth Cir. 1980) the Court noted:

> Although Congress provided that a claimant must exercise this right [to appeal] in sixty days, it did not address the predicament of a claimant who was so mentally ill that he can not understand the administrative procedure. *In the absence of any manifestation of congressional consideration of this problem, we will not attribute to Congress an intent to apply the doctrine of*

res judicata to deprive such a person of a hearing. (Emphasis ours.)

This Court, as well as various lower courts, has often recognized the necessity of tailoring administrative, judicial and legislative procedures to the capacities and circumstances of those who are to be heard so as to afford them a meaningful opportunity to present their case. *Goldberg v. Kelly,* 397 U.S. 254, 268-269, 90 S. Ct. 1011, 1020-1021, 25 L. Ed. 2d 287, 299-300 (1970). In this regard other courts have noted that mental illness could, in an appropriate case, prevent the application of administrative *res judicata. Green v. Weinberger,* 500 F.2d 203, 205 (Fifth Circuit 1974); *Leviner v. Richardson,* 443 F.2d 1338, 1341-43 (Fourth Circuit 1971); *Parker v. Califano,* 644 F.2d 1199, 1203 (Sixth Circuit 1980).

Consistent with the spirit of this judicial realism and concern for the mentally disabled, the Court, in *Dundon v. United States,* 559 F. Supp. 469 (E.D. N.Y. 1983), in substantially similar circumstances to the instant case, fashioned an exception to the periods of limitation for the comatose and mentally incompetent.

Of great significance, this Court, in *Burnett v. New York Central Railroad Company,* 380 U.S. 424, 427, 85 S. Ct. 1050, 1054, 13 L. Ed. 2d 941, 944 (1965), examined the period of limitation (3 years) within which suits could be brought asserting rights under the Federal Employers Liability Act (FELA) and specifically noted that the FELA limitation period was not totally inflexible *despite* its literal implications, and that under appropriate circumstances, it could be extended beyond three years.

In reviewing these cases, the question may arise as to whether or not the timely application for disability bene-

fits is substantively analogous to a period of limitations. In *Weinberger v. Salfi,* 422 U.S. 749, 764; 95 S. Ct. 2457, 2466, 45 L. Ed. 2d 522, 538 (1975), this Court intimated that these "timeliness requirements" are more akin to periods of limitation than to elements of entitlement. If so, a tolling provision for the mentally disabled should surely be recognized. Indeed, there is ample authority, especially when viewing contemporaneous decisions addressing congressional intent and notions of fundamental fairness, to support this Court's finding of an exception to the language of the Act's one-year retroactive limitation on benefits.

The Arizona Supreme Court, in *Brooks v. Southern Pacific Company,* 105 Ariz. 442, 466 P.2d 736 (1970), found itself presented with a suit under the Federal Employers Liability Act (FELA) in which the suit would have been barred but for tolling by reason of the plaintiff's mental incompetency. The Arizona Supreme Court, finding this Court's reasoning in *Burnett, supra,* persuasive, held that in the interest of justice, the FELA limitation period to be *flexible* notwithstanding the absence of express language containing exceptions. As the Court noted:

> The fundamental unfairness of rigidly enforcing the statute of limitations against mentally incompetent persons has been recognized by the statutes of the District of Columbia and nearly all the states, including Arizona. These statutes provide in varying ways for suspension of the statute of limitations when the plaintiff is in "insane", of "unsound mind", mentally incompetent or under other definitions of mental disability. *See,* Developments in the Law, Statute of Limitations, Sixty-three Harvard Law Review 1177, 1229 (1950). We emphasize that we are here deciding the question of federal law and are not applying the statutes of this or any other state. However, the extent to which legislative bodies have provided exceptions for mental disabilities is a relevant factor in considering the policies

underlying the statute of limitations. 105 Ariz. 444, 445, 446 P.2d at 738-739.

Similarly, and quite instructive to this appeal, the Court, in *Case v. Califano*, 441 F. Supp. 304 (D.C. S.C. 1977), refused to affirm the secretary's denial of benefits on the basis of a failure to comply with statutorily-established timeliness requirement where both the social security claimant and her attorney were mentally ill. The Court looked to analagous authority outside of social security disability law to examine notions of fundamental fairness, as embodied in the due process clause of the Fifth Amendment, when determining whether or not to excuse the claimant's failure to file a timely application of appeal due to mental illness. The Court observed:

> In this context, this Court feels that it is appropriate to look to analogous situations involving prisoner *pro se* petitions to determine whether the plaintiff was unjustifiably prevented from presenting a potentially meritorious claim due to administrative time requirements. It is apparent from the record that the combination of the mental illness of Mrs. Case and her attorney resulted in the "blind leading the blind." For the secretary to deny benefits to this plaintiff on the basis of a failure to comply with time requirements under these facts shocks the conscience of this Court, and is a clear denial of the basic due process rights to notice and to a meaningful opportunity to be heard. *Id.* at 307.

In both administrative and judicial proceedings below, the Social Security Administration emphasized that Ida Yeiter's guardian could have applied for disability benefits on the part of his ward but did not. The question, however, is not whether a guardian "could have applied" for benefits on behalf of his ward, but rather whether or

not, as in the case of *respondeat superior*, the ward will be held responsible for or affected by the guardian's *failure* to do so. *Respondeat superior,* as with other species of vicarious liability, has as its premise factual circumstances not present in the instant case. Such circumstances fundamentally include an implied rule of control of the master over the behavior of the servant. Here Ida Yeiter exercised no selection of or control over her guardian, Gerald Yeiter, nor could she; her mental disability made such control impossible.

In any event, as a matter of law, petitioners' guardian could *not* adversely impact her rights to disability benefits. The relationship between Ida Yeiter and her court-appointed guardian was created and defined by the State of Michigan; therefore, Michigan's law of guardianship is controlling with regard to the consequences flowing from the acts and omissions of Ida Yeiter's court-appointed guardian. Neither Michigan statutory law, MCL § 700.455 (1) (Appendix 21), nor common law grants the guardian the power to waive the rights of his ward. *Reliance Insurance Company v. Haney,* 54 Mich. App. 237, 220 N.W.2d 728 (1974) (Guardian's waiver of ward's uninsured motorist coverage); *Tuer v. Niedoliwka,* 92 Mich. App. 694, 285 N.W. 2d 424 (1979) (Guardian compromises ward's claims against tort-feasor).

Although petitioner has looked for and failed to find an example of this issue arising in Social Security disability litigation, a recent Michigan Court of Appeals decision held that the appointment of a guardian for a minor ward does not start the running of a period of limitation against the minor ward. *Paavola v. St. Joseph Hospital,* 119 Mich.

App. 10, 325 N.W.2d 609 (1982); lv. to appeal denied, 417 Mich. 944,—N.W.2d—(1983); see also *Keeting v. Michigan Central Railroad Company,* 94 Mich 219 (1892). It would indeed be an ironic twist of social welfare policy if the mentally disabled are to be, in essence, penalized for their inability to guide and control the acts and omissions of their guardians.

Indeed, the Eighth Circuit, in *Johnson v. United States,* 87 F.2d 940 (Eighth Cir. 1930) reviewed the relationship between the appointment of guardians and impact on the rights of their wards by noting that " . . . it has been generally held under such statutes that the insane person may maintain an action by its guardian *at any time* during the continuance of his disability." *Id.* at 942. (Emphasis ours.)

Here, the Court of Appeals avoided the guardianship issue by holding that Ida Yeiter possessed no right to disability benefits until *after* an application on her behalf was filed. The Appellate Court's conclusion is erroneous on two grounds.

First, the conclusion is clearly contrary to the position taken by this Court when it intimated that these "timeliness requirements" are more akin to periods of limitations than to elements of entitlement. *Weinberger v. Salfi,* 422 U.S. 749, 764, 95 S. Ct. 2457, 2466, 45 L. Ed. 2d 522, 538 (1975); See page 9, *supra.* In short, in perfunctory fashion, the Sixth Circuit Court of Appeals casually fashioned a bright line between Ida Yeiter and her receipt of disability benefits insofar as the attachment of constitutional guarantees is concerned. The Court refused to acknowledge Ida Yeiter's rights *in the entitlement process itself.* No holding of this Court permits such reasoning.

Further, this Court has ruled that disability benefits constitute property interests protected by the due process clause of the constitution. *Flemming v. Nestor,* 363 U.S. 603, 611, 80 S. Ct. 1367, 1373, 4 L. Ed. 2d 1435, 1444 (1960); *Mathews v. Eldridge,* 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L. Ed. 2d 18,—(1976). Ida Yeiter possesses a property interest in her Social Security disability payments. She was a wage earner fully within the requirements of the Social Security Act for entitlement to disability benefits. (Appendix 26, ¶ 8 & 32, ¶ 1) The only means, therefore, by which the Secretary can avoid the conclusion that disability benefits are a "property right" of Ida Yeiter's protected by the Fifth Amendment, is to argue that no property right is created until *after* the application for benefits is initiated by the disabled person. As noted earlier, however, this Court intimated in *Weinberger v. Salfi,* 422 U.S. 749, 764, 95 S. Ct. 2457, 2466, 45 L. Ed. 2d 522, 538 (1975), that such periods of limitation found within the Act do not limit the nature of the right itself, but only established timeliness requirements akin to statutes of limitations. (*See* pgs. 9 & 12, infra) Ida Yeiter was surely "vested" with *sufficient* interest in disability payments so as to invoke the protections of the due process clause of the Fifth Amendment. *Shrader v. Harris,* 631 F. 2d 297, 301 (Fourth Circuit 1980) (Noting that the Supreme Court has recognized entitlement to Social Security Disability Benefits as a statutory property interest protected by the due process clause.) See also, *Case v. Califano,* 441 F. Supp. 304, 307 (D.C. S.C. 1977). Clearly, this Court, and others, has recognized that one's interest in disability payments constitutes a sufficient property interest so as to invoke the protections of the due process clause

of the Fifth Amendment. Here the date of filing was simply an administrative means of *measuring* or calculating Ida Yeiter's property interest; i.e., her amount of disability benefits.

The Court of Appeals also erred in ruling that because the Act is facially neutral, it is not violative of petitioner's equal protection rights. Petitioner asserts that to the extent that the one-year retroactively limitation of the Act excludes the mentally disabled from Social Security Disability Benefits because of their disability, it is violative of equal protection.

Petitioner recognizes that the disputed provision of the Social Security Disability Act considered herein is facially neutral; however, its application in cases such as this has a viciously disparate effect on the mentally disabled. Acknowledging *Washington v. Davis,* 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976), petitioner realizes that this Court will most likely employ a rational basis test in evaluating the Act. Petitioner prays, however, that a *"meaningful",* rather than *"mere",* rational basis test will be employed. The former involves an honest inquiry into the connection between legislative means and ends. The latter often makes possible a pernicious form of legislative and administrative carte blanche.

This Court recently ruled that a rationality test "with teeth" is now favored. *Cleburne v. Cleburne Living Center,* 473 U.S. —, 87 L. Ed. 2d 313, 107 S. Ct. — (1985). Here, the unquestioned end that the one-year retroactivity limitations sought to reach was that of protecting the fiscal integrity of the Social Security system. The fiscal integrity of the Social Security system, however, will not be threatened by an exception to the one-year

retroactive limitation for the mentally disabled; hence, application of the limitation to the mentally disabled is not rationally related to the end of safeguarding the system's fiscal integrity. Indeed, the only consequence will be to end a government windfall now paid for by mentally disabled wage earners.

Handicapped persons, especially the mentally incapacitated, possess most, if not all, of the indicia of suspectness, regarding equal protection claims, enumerated by this Court. Even if, however, the mentally disabled fail to rise to the level of a suspect or quasi-suspect class in this Court's eyes, they are certainly considered by ordinary Americans as "a group that ranks amongst [the] most misfortuned . . .". *Harrison v. Michigan,* 350 F. Supp. 846, 849 (E. D. Mich. 1972). Similarly, a Texas federal court, quoting former American Bar Association President, Chesterfield Smith, observed:

> The plight of the mentally disabled is amongst the saddest and most alarming problems facing our society, and too little is done to alleviate the effects of this problem. . . . The mentally disabled have been the victims of widespread governmental complacency and outright neglect. This is outrageous. But, worst of all, most of us have accepted it without protest. Washington Post, October 15, 1971, Section A, at 1.

This appeal challenges such complacency and neglect.

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CONCLUSION

WHEREFORE, Petitioner prays that a writ of certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Sixth Circuit in Ida B. Yeiter, a legally incapacitated person, by and through her guardian, Gerald S. Yeiter, v. Secretary of Health and Human Services. In the event that the Petition is granted, Petitioner prays that the judgment of the Court below be reversed and that the cause be remanded.

Respectfully submitted,

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DATED: August 4, 1987

APPENDIX A

OPINIONS BELOW

Recommended for Full Text Publication
See, Sixth Circuit Rule 24

No. 86-1345

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IDA B. YEITER, a legally incapacitated person, by and through her guardian, Gerald S. Yeiter, *Plaintiff-Appellant,*	)	ON APPEAL from the United States District Court for the Western District of Michigan.
v.	)	
SECRETARY OF HEALTH & HUMAN SERVICES, *Defendant-Appellee.*	)	

Decided and Filed May 6, 1987

Before: KEITH, KENNEDY and RYAN, Circuit Judges.

KENNEDY, Circuit Judge. The sole issue in this appeal is whether plaintiff-appellant Ida B. Yeiter ("plaintiff") is entitled to disability insurance benefits retroactive to the onset of her disability or is limited, as provided in 42 U.S.C. § 423(b) and as the District Court found, to benefits retroactive to one year prior to filing of her application. We AFFIRM the District Court's judgment.

Plaintiff is mentally and functionally incapacitated from injuries sustained in an automobile accident on November 14, 1972. Her husband, appointed her guardian in March, 1973, filed an application for disability insurance benefits on August 31, 1983. Benefits were awarded retroactive to August, 1982, pursuant to 42 U.S.C. § 423(b), which provides in pertinent part: "An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month." Plaintiff filed for reconsideration, arguing that since she was mentally incompetent and therefore unable to file for benefits herself, she should receive benefits from the date of her disability. The Secretary denied the petition for reconsideration and the District Court upheld the denial.

Plaintiff makes four arguments in support of her claim for additional retroactive benefits and Amici Curiae. Disabled Peoples' International, Human Rights Advocates, and International Disability Law, Inc. ("Amici"), make an additional one. We find none of these arguments persuasive.

Plaintiff first argues that Congress did not intend the one-year limit on retroactive benefits to apply where the failure to file for benefits arises from the disability itself, *e.g.*, as in mental incompetency. However the statute does not permit such a construction. Title 42 U.S.C. § 416 (i)(2)(B) provides that "[n]o period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period . . . ." Prior to 1958, there were no retro-

active benefits. When Congress amended the statute to allow such benefits, it limited them to twelve months. There is simply no basis for construing that limitation inapplicable to certain disabilities. Congress was aware that persons were losing benefits they otherwise were entitled to because they did not file timely applications. Nonetheless, in unambiguous language, it chose to limit retroactivity to twelve months. Moreover, although plaintiff was under a disability, her guardian or some other person acting on her behalf could have filed an application.

Plaintiff's second argument is that she should not be bound by her guardian's waiver of her benefits, since under state law a court-appointed guardian may not waive a ward's rights. However, plaintiff is not denied benefits because of her guardian's waiver. Rather, she did not become entitled to those benefits because she did not file an application. As pointed out by the Supreme Court in *Schweiker v. Hansen,* 450 U.S. 785, 790 (1981):

> Congress expessly provided in the Act that only one who "has filed application" for benefits may receive them, and it delegated to [the Secretary of Health and Human Services] the task of providing by regulation the requisite manner of application. A court is no more authorized to overlook the valid regulation requiring that applications be in writing than it is to overlook any other valid requirement for the receipt of benefits.

See also Johnson v. United States, 572 F.2d 697, 699 (9th Cir. 1978) (holding, in case involving benefits for a minor, that "filing is a substantive condition of eligibility").

Third, plaintiff argues that 42 U.S.C. § 423(b), when applied to the mentally incapacitated, violates principles of fundamental fairness and thus violates the due process pro-

visions of the fifth amendment. Laying aside the question of whether plaintiff had a property interest in benefits for which no application had been filed, there is nothing fundamentally unfair in conditioning benefits upon the filing of an application. That application for benefits can be filed not only by the claimant, but also by a guardian, a person responsible for the care of the claimant, or the manager or principal officer of an institution caring for the claimant. 20 C.F.R. § 404.612(c). A person who is mentally incapacitated and totally unable to care for himself or herself will ordinarily be in the care of someone. That person responsible for claimant's care will have a strong incentive to file for benefits. The means thus provided for securing benefits meets due process requirements.

Finally, plaintiff claims that 42 U.S.C. § 423(b) violates her constitutional guarantee of equal protection. She acknowledges that the rational basis test is appropriate, but urges application of a rationality test "with teeth," citing *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). She asserts that application of the one-year retroactive limitation to the mentally incapacitated is not rationally related to the end of safeguarding the fiscal integrity of the social security system. If only the mentally handicapped were singled out, that might be true; however, all claimants receive retroactive benefits for the same period—one year. Congress' purpose in limiting benefits to one year has a rational basis in that it preserves the fiscal integrity of the social security trust fund. As the Supreme Court stated in *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (citation omitted):

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause

> merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."

Amici argue that the failure to allow benefits retroactive to the date of disability violates international law. The specific governmental conduct Amici complain of is the government's failure to provide plaintiff or her guardian with advance notice of her potential entitlement to disability benefits. We can find no source for the requirement that the government must locate mentally incompetent persons and inform them of their potential entitleent to benefits under a government program. Assuming that international law does require that the state care for mentally incapacitated persons, the United States provides a system for such care. In addition to disability insurance, the federal government provides medical care through Medicaid, and for those not covered by the social security system, supplemental security income. State governments also provide for the mentally handicapped. The state does not deprive persons of a fundamental right by requiring reasonable procedures to claim a benefit. It should be kept in mind that, with respect to retroactive benefits, the claim is for the payment of money; care for the mentally incapacitated claimant has already been provided for that period by some person or institution.

Finally, the question of violation of international law was not raised in the District Court. It may not be raised for the first time on appeal. *Wright v. Holbrook*, 794 F.2d 1152, 1157 (6th Cir. 1986).

Accordingly, the judgment of the District Court is AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IDA YEITER,

Plaintiff,

vs. Case No. G85-5 CA

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Defendant.

---/

OPINION

(Filed March 24, 1986)

This social security case is before the court on cross-motions for summary judgment filed by plaintiff and the Secretary. Plaintiff has challenged the Secretary's decision to deny plaintiff retroactive benefits beyond the 12-month period provided in 42 U.S.C. § 423(b).[1] Plaintiff advances a three-part argument that based on 1) congressional intent and statutory interpretation, 2) due process, and 3) equal protection, she has unlawfully been denied retroactive benefits beyond the 12-month period preceding the date of her application. Based on the discussion below, the court resolves these arguments in favor of the Secretary. As a result, plaintiff's motion for summary judgment is denied, the Secretary's motion for summary judgment is granted, and the complaint is ordered dismissed.

Background

Plaintiff was involved in a severe automobile accident on November 14, 1972 which left her brain damaged (Tr. 43). On March 30, 1973 Gerald Yeiter was appointed as plaintiff's legal guardian and charged with the custody and management of her person and estate (Tr. 32-33). On August 31, 1983, plaintiff, by and through her guardian, filed an application for disability benefits (Tr. 43).

The Secretary found that plaintiff was disabled as of November 14, 1972, but limited an award of benefits retroactive only to August, 1982, pursuant to 42 U.S.C. § 423(b).

In November, 1984, the parties agreed to utilize the expedited appeals process pursuant to 20 C.F.R. § 404.923-928 (Tr. 1). These regulations provide that the normal administrative review process may be bypassed when the only issue is the constitutionality of a portion of the Social Security Act and, but for administrative application of the allegedly unconstitutional provision, the claim would have been allowed. Plaintiff and the Secretary stipulated that the issue to be presented to the court was whether § 423(b) was inapplicable to plaintiff's case, by virtue of its alleged unconstitutionality and by the doctrine of equitable statutory construction (Tr. 1).

Suit was filed by plaintiff on January 3, 1985. The transcript of the administrative proceedings had been filed, both parties have fully briefed the issues and the case is ripe for a decision by the court.

Intent and Construction of 42 U.S.C. § 423(b)

Plaintiff's first argument can be summarized as follows: First, since plaintiff is mentally incapacitated, she did not have the ability to file an application or to direct someone to file an application on her behalf. Plaintiff's guardian did not file on her behalf until August, 1983 due to his "misunderstandings and ignorance" of plaintiff's entitlement. Second, prior to 1958, there was no provision in the Act to allow retroactive benefits. In amending the Act to allow retroactive payment of benefits for 12 months prior to the application date, Congress intended to remedy the situation where an otherwise deserving applicant would be penalized for failing to file a timely application. Since there is no evidence that Congress gave any attention to the specific case where an individual fails to file due to mental incompetence, plaintiff asserts that an exception should be read into the statute which would suspend the operation of the 12-month retroactivity rule.

The first prong of this argument, that plaintiff herself could not file and her guardian did not file until some eleven years after her accident due to ignorance, is not persuasive and has repeatedly been rejected by the courts. The fundamental requirement to obtain benefits under the Act is the filing of a written application. *Schweiker v. Hansen*, 450 U.S. 785, 790 (1981); 42 U.S.C. § 416(i)(2)(B). If the individual is incapacitated, the application can be made by a court appointed representative. *Berner v. Finch*, 335 F.Supp. 318, 322 (E.D. Mo. 1971); 20 C.F.R. § 404.612 (c). Ignorance of the potential availability of benefits does not serve to suspend the requirement of an application, nor does it provide grounds to ignore the plain man-

date of § 423(b) that retroactive benefits cannot be awarded beyond the 12 months prior to the application date. *Mitchell v. Harris,* 496 F.Supp. 230, 233 (D. N.J. 1980); *Sweeney v. Secretary,* 379 F.Supp. 1098, 1099, 1102 (E.D. N.Y. 1974); *Donnelly v. Gardner,* 286 F.Supp. 288, 289-90 (W.D. Wisc. 1968).

Plaintiff argues, however, that this court should carve a narrow exception, tailored to plaintiff's circumstances, which would allow her to collect some eleven years worth of retroactive benefits. Plaintiff maintains that the "broad, humanitarian remedial purposes" of the Act supports such an exception and would effectuate congressional intent to provide retroactive benefits. Plaintiff argues that a liberal construction of § 423(b) would prevent the government from benefiting "by technical rules whose effect is to eliminate benefits to those most in need and least able to initiate the disability determination process" (Plaintiff's brief at 17).

Plaintiff's argument is flawed in several respects. In the first instance, contrary to plaintiff's suggestion, she was able, through her guardian, to "initiate the disability determination process." Second, in urging a liberal construction of § 423(b), plaintiff would apparently have this court ignore the literal requirement of the statute. This the court cannot do. In *Sweeney,* 379 F.Supp. at 1100, the court in rejecting a plea for liberal interpretation of § 423(b) stated:

> "The word 'construction' itself implies, in this context, the resolution of an ambiguity, and the liberal construction rule means nothing more or less than that the real ambiguities in the meaning of the Act should, as a general rule, be decided in favor of the claimant.

> Where, however, there can be no doubt as to the import of the statutory requirements, there is no room for 'construction', be it liberal or otherwise."

In this light, plaintiff does not argue the plain meaning of the statute, but rather, she urges that its application, in her case, is unfair. While plaintiff's eleven year delay in filing for benefits, due apparently to her guardian's unawareness of her potential entitlement, is undeniably unfortunate, the statute's 12-month rule is unambiguous, "and cannot be construed away by this court." *Mitchell,* 496 F.Supp. 233.

Constitutional Considerations

Plaintiff's first constitutional argument is based on the assertion that she has a property interest in her disability benefits and that failure to provide her with full retroactive benefits violates the Due Process Clause of the Fifth Amendment. Implicit in this argument is the notion that plaintiff's property interest vested at the time of the accident which ultimately rendered plaintiff disabled.

It is settled law that "the interest of an individual in *continued* receipt of these [disability] benefits is a statutorily created 'property interest protected by the Fifth Amendment.'" *Mathews v. Eldridge,* 424 U.S. 319, 332-33 (1976) (emphasis added). In *Mathews,* the court held that once an individual is receiving benefits, those benefits may not be terminated without procedures that comport with due process. Plaintiff has provided no authority, and the court has found none, which supports the proposition that plaintiff's property right vested prior to the filing of her application. Indeed, in *Mitchell, supra,* the court rejected

an argument that the retroactivity rule in § 423(b) as applied to those who were ignorant of their potential eligibility constituted denial of property without due process. 496 F.Supp. at 233. In *Mitchell,* as in this case, the claimant was disabled for a number of years before an application for benefits was filed. The *Mitchell* court refused to find that the claimant had an "accrued property right" in retroactive benefits prior to the filing of an application. 496 F.Supp. at 233. Once plaintiff did file, her rights to 12 months of retroactive benefits, as provided for by § 423 (b) was established. The court did not find that the plaintiff had any interest worthy of constitutional protection in an award of benefits retroactive to the date of disability. *Id.* at 234.

The essence of plaintiff's argument is that the date of her application should not be permitted to affect the period to which she is entitled to benefits. The Supreme Court has noted that the Act provides that only those who have filed an application for benefits may be entitled to them and that the courts have no power to alter this requirement or to "overlook any other valid requirement for the receipt of benefits." *Schweiker,* 450 U.S. at 790. Section 423(b) is a valid statutory limitation on retroactivity, and plaintiff has failed to demonstrate that she has a property interest in anything beyond what she was entitled to once an application was filed on her behalf.

Plaintiff's equal protection argument is premised on her assertion that since she, herself, was unable to file for benefits, § 423(b) discriminates against her since it operates to deny her benefits that she would have received if there had been a filing closer in time to the date of her disability. Plaintiff argues that the statute is defective

due to its failure to provide exceptions for the mentally disabled. This argument, however, ignores the obvious. Plaintiff had a guardian who was vested with the authority to act in her behalf. As previously noted, applications may be filed by others on behalf of someone not capable of looking out for their own best interests. If the guardian has not acted in plaintiff's best interests, it is not because the Social Security Act prevented him from doing so.

Accordingly, plaintiff's motion for summary judgment is denied, the Secretary's motion for summary judgment is granted and the complaint is ordered dismissed.

Entered: March 21, 1986

/s/ Wendell A. Miles
Wendell A. Miles
Chief U.S. District Judge

FOOTNOTE

1 42 U.S.C. § 423(b) provides, in pertinent part:

"An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month."

APPENDIX B

OTHER OPINIONS

AGREEMENT FOR UTILIZATION OF EXPEDITED APPEALS PROCESS IN RE Ida B. Yeiter

To permit utilization of the expedited appeals process as provided in 20 CFR 404.923 through 404.928, the claimant, Ida B. Yeiter and Paul Rosenthal, Acting Chief Administrative Law Judge, Office of Hearings and Appeals, Social Security Administration, agree that:

The following facts and procedural history are not in dispute:

1. An application for disability insurance benefits was filed on Ida B. Yeiter's behalf on August 31, 1983. It was alleged that she had been disabled since November 14, 1972. She was found to have been disabled from the alleged onset date and benefits were awarded effective with August, 1982. A request for reconsideration was filed on the basis that benefits should have been awarded back to the date of onset of disability and not just one year prior to the month of application. The rationale supplied was that the claimant was and is mentally incapacitated and unable to apply in her own right and that her legal Guardian failed to act in her interest. The reconsideration determination dated June 13, 1984, affirmed the initial determination under authority of Section 223(b) of the Social Security Act. A hearing was requested and prior to a hearing being held claimant's attorney requested expedited appeal.

2. Section 223(b) of the Social Security Act states, in pertinent part, that an individual who would have been entitled to a disability insurance bene-

fit for any month shall be entitled to such benefit if an application is filed before the end of the 12th month immediately succeeding such month.

3. Except as indicated in paragraph 4 of this agreement, the Secretary's interpretation of the law is not in dispute.

4. The sole issue in dispute is the application of Section 223(b) of the Social Security Act, which is alleged to be unconstitutional by the claimant, and to be inapplicable underneath the doctrine of equitable statutory construction.

5. Except for the provision challenged, the right of the claimant is established.

6. The Secretary's Reconsideration Determination dated June 13, 1984, is final for purposes of Section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

This agreement, when signed by all parties thereto, shall constitute a waiver by the parties and the Secretary of Health and Human Services with respect to the need of the parties to pursue the remaining steps of the administrative appeals process. The period for filing a civil action in the District Court of the United States, as provided in Section 205(g) of the Social Security Act, 42 U.S.C. 405(g) shall begin as of the date on which the parties and the Chief Administrative Law Judge, the duly authorized representative of the Secretary of Health and Human Services, sign the agreement. Any civil action under the expedited appeals process must be filed within 60 days following the date on which the agreement is signed by the Chief Administrative Law Judge on behalf of the Secretary.

IN WITNESS WHEREOF the parties have signed their names to this agreement.

DATED: Nov. 5, 84 /s/ G. Samuel Yeiter
Ida B. Yeiter, Claimant
By and through her
Guardian, Samuel Yeiter

DATED: Nov. 5, 1984 /s/ M. J. Stephen Fox
M. J. Stephen Fox,
Attorney-at-Law

DATED: Nov. 07, 1984 /s/ Paul Rosenthal
Paul Rosenthal
Acting Chief Administrative Law Judge
Office of Hearings and
Appeals, SSA

Department of
Health and Human Services
Social Security Administration

RECONSIDERATION DETERMINATION

Program Center	District Office or Branch Office
Chicago IL 60606	Suite 600 250 Monroe Northwest Grand Rapids, Michigan 49503
Name of Wage Earner or Self-employed Person Ida B. Yeiter	Social Security Claim No. 364-16-1745 HA
Name of Claimant Ida B. Yeiter	Type of Claim Disability Insurance Benefits

Determination:

Gerald S. Yeiter applied for disability insurance benefits on behalf of Ida B. Yeiter on August 22, 1983. On February 6, 1984, Mr. Yeiter was notified that Mrs. Yeiter was entitled to disability insurance benefits effective August 1982. On March 15, 1984, Mr. Yeiter filed a timely request for reconsideration, stating that he believed that Mrs. Yeiter should be entitled to disability insurance benefits effective with the onset of her disability rather than one year prior to the month in which the application was filed.

The issue to be resolved is Mrs. Yeiter's month of entitlement to disability insurance benefits. This depends on when she first meets the requirements for entitlement under the provisions of the Social Security Act.

Section 223(a)(1) of the Social Security Act provides that disability insurance benefits will be payable to every individual who is insured for disability insurance benefits, has

not attained age 65, has filed an application for disability insurance benefits, and is under a disability.

Section 223(b) of the Social Security Act provides that disability insurance benefits may be payable for up to 12 months before the month in which an application is filed if all other factors of entitlement are met.

Section 404.612 of Social Security regulations No. 4 provides that if a claimant is mentally incompetent, an application for benefits on her behalf may be made by a court-appointed representative or a person who is responsible for the care of the claimant.

Mrs. Yeiter's disability began on November 14, 1972. Mr. Yeiter, through his attorney, alleges that Mrs. Yeiter was mentally incompetent and therefore unable to apply for disability insurance benefits in her own right and Mr. Yeiter, her legal guardian, did not act in her best interests by not applying for those benefits.

There is no provision in the Social Security Act to allow for payment of disability insurance benefits for more than 12 months prior to the month in which an application was filed. Although Mrs. Yeiter is mentally incompetent, her legal guardian could have applied for disability insurance benefits on her behalf at an earlier date. Since he did not do so, benefits cannot be paid for months prior to August 1982.

It is determined upon reconsideration that Ida B. Yeiter is entitled to disability insurance benefits effective August 1982 based on the application filed August 22, 1983.

AUTHORITY:

Section 223(a)(1) and 223(b) of the Social Security Act;
Section 404.612 of Social Security Regulations No. 4.

Burton L. Blanchard, Chief
Reconsideration Review Section

6/13/84

Date

cc: District Office, Suite 600
250 Monroe Northwest
Grand Rapids, Michigan 49503

A. Hudale: lj
06/11/84

APPENDIX C

JUDGMENT BELOW

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IDA YEITER,

Plaintiff,

Case No. G85-5 CA

vs.

SECRETARY OF HEALTH AND HUMAN SERVICES

JUDGMENT
(March 24, 1986)

Defendant.

---/

At a session of the Court held in and for said District and Division in the City of Grand Rapids, Michigan, this 24 day of March, 1986

PRESENT: WENDELL A. MILES
CHIEF U.S. DISTRICT JUDGE

In accordance with the Opinion dated March 2, 1986, IT IS HEREBY ORDERED that the plaintiff's motion for summary judgment is denied, the Secretary's motion for summary judgment is granted, and the complaint is ordered dismissed.

IT IS SO ORDERED.

/s/ Wendell A. Miles
Chief U.S. District Judge

Certified As A True Copy
Gerald H. Liefer, Clerk
By /s/ J. Fuller
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date MAR 25 1986

APPENDIX D

OTHER MATERIALS

42 USCS § 423 Disability . . .

(b) Filing of application. An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If, upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed in such first month and no request under section 205(b) [42 USCS § 405(b)] for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final deciison of the Secretary). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

Michigan Compiled Laws

§ 700.455. Powers, rights, and duties of guardian of legally incapacitated person.

Sec. 455. (1) A guardian of a legally incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by rea-

son of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) To the extent that it is consistent with the terms of an order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of his or her ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward the guardian shall make provision for the care, comfort, and maintenance of the ward and, when appropriate, arrange for the ward's training and education. The guardian shall have the responsibility of securing services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A guardian may give any consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If conservator for the estate of the ward is not appointed, a guardian may:

(i) Institute proceedings to compel a person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward. The guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least 1 of the next of kin of the incompetent ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

(e) To report the condition of the ward and of the estate which is subject to the guardian's possession or control, as required by the court or court rule. The report shall detail the condition of the ward, any medical or sanitory treatment or care to which the ward was subjected, and what reasons, if any, exists for the continuation of the guardianship or limited guardianship.

(f) If a conservator is appointed, the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this act, and the guardian shall account to the conservator for funds expended.

(2) A guardian of a person for whom a conservator also is appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his or her services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutuions for the ward's care and maintenance.

(3) If a ward dies while under guardianship, and a conservator has not been appointed for the estate of the ward, and if the guardian has possession of any money of the deceased ward, the court may, upon petition of the guardian and with or without notice, hear a claim for burial expense or any other claim as the court considers advisable. Upon hearing the claim the court may enter an order allowing or disallowing the claim or any part of it and provide in the order of allowance that the claim or any part of it be paid immediately if the payment can be made without injury or serious inconvenience to the ward's estate.

UNITED STATES FEDERAL DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IDA B. YEITER, a legally
incapacitated person, by
and through her guardian,
Gerald S. Yeiter,

Plaintiff,

vs

File No.:

MARGARET HECKLER, Secretary
of Health and Human Services,

COMPLAINT
(Jan. 3, 1985)

Defendant.

---/

Ida B. Yeiter, a legally incapacitated person, by and through her attorneys, Buchanan & Bos, make the following representations to this Court for purposes of obtaining judicial review of an adverse decision of the Secretary of Health and Human Services:

1. That Ida B. Yeiter (whose social security account number is 364-16-1745) is a resident of Kent County, Michigan.

2. That Ida B. Yeiter complains of a decision by the Secretary of Health and Human Services which adversely effects her in whole or part. The decision has become the final decision of the Secretary for purposes of judicial review vis-a-vis use of the expedited appeals process as provided for in 20 CFR 404.923 through and including 404.928.

3. That the decision of the Secretary bears the following caption:

In the case of	Claim) for Period of Disability and Disability Insurance Benefits
Ida B. Yeiter	
Claimant	
Ida B. Yeiter	364-16-1745
Wage Earner	Social Security Number

4. That Ida B. Yeiter has exhausted her administrative remedies in this matter as seen in the Order of Dismissal dated November 27, 1984, (Exhibit 1) and the Secretary's agreement with plaintiff for utilization of the expedited appeals process, dated November 7, 1984 (Exhibit 2), and therefore this court has jurisdiction for judicial review pursuant to the aforesaid statutory provisions for the expedited appeal process together with that otherwise provided for in 42 USC 405(g).

5. That an application for disability insurance benefits and for a determination of a period of disability was filed on behalf of Ida B. Yeiter, a legally incapacitated person, on August 31, 1983.

6. That therein, Ida B. Yeiter, by and through her guardian, Gerald S. Yeiter, alleged that she had been disable continuously and uninterruptedly since November 14, 1972.

7. That thereafter, the Secretary determined Ida B. Yeiter to have been continuously and uninterruptedly disabled from November 14, 1972, to the present date, but limited award of social security disability benefits retroactive to August, 1982, pursuant to Sec. 223(b) of the Social Security Act which provides, inner alia, that an individual who would have been entitled to a disability insurance benefit for any month shall be entitled to such benefit if an application is filed before the end of the 12th month immediately succeeding such month.

8. That the Secretary does not dispute that Ida B. Yeiter is otherwise entitled to social security disability benefits dating back to November 14, 1972, but for the failure of her or someone acting on her behalf to have filed an application for disability insurance benefits consistent with those provisions set out in Sec. 223(b) of the Social Security Act.

9. That Ida B. Yeiter was in a severe automobile accident on November 14, 1972, and suffered, inner alia, frontal lobe damage to her brain such that she remained comatose for a period of approximately 14 months, was bedridden for several years thereafter requiring 24-hour round-the-clock nursing care, and never recovered from these and other injuries such that from November 14, 1972, to the present date, she has been and remains a legally incapacitated person incapable of acting in her own behalf and incapable of directing others to act in her own behalf.

10. That as a result of her mental incapacity, Ida B. Yeiter neither applied for social security disability benefits on her own behalf nor directed anyone, including her guardian, Gerald S. Yeiter, to act on her behalf by filing an application for disability benefits.

11. That the Social Security Act was designed for the protection of society and enacted to alleviate the burdens resting on large numbers of the population because of the insecurities of modern life, particularly those accompanying old age, unemployment, and disability, through the establishment in advance of a provident fund for the needy worker out of which he or she will be paid, inter alia, disability benefits.

12. That the disability provisions of the Social Security Act should not be strictly construed to deny disability benefits but should be given a liberal construction in favor of awarding disability benefits.

COUNT I

13. That plaintiff Ida B. Yeiter adopts, as if fully set forth herein, those allegations contained in Paragraphs 1 through 12 above.

14. That Sec. 223(b) of the Social Security Act has been construed by the Secretary to be without any exceptions, whether expressed or implied, with respect to the limitation that disability insurance benefits be awarded retroactively to a maximum of twelve (12) months immediately prior to the date of the application for disability benefits.

15. That claimants such as Ida B. Yeiter, who are mentally incapacitated, are incapable of either applying in

their own behalf for social security disability benefits within a timely manner or directing others to act on their behalf to apply in a timely manner for social security disability benefits.

16. That to strictly construe Sec. 223(b) of the Social Security Act as so done by the Secretary produces severe and oppressive consequences clearly contrary to the remedial spirit and letter of the Social Security Act and therefore an implied exception to Sec. 223(b) should be read into the act applicable to those cases where social security disability claimants, such as Ida B. Yeiter herein, are determined to be mentally incapacitated continuously and uninterruptedly from the date of disability to the date of application for disability benefits.

17. That construing the Social Security Act, Sec. 223(b), in the above manner, is mandated by and finds support in the judicial doctrine of equitable statutory construction and is otherwise consistent with the intent of Congress.

WHEREFORE, Ida B. Yeiter seeks judicial review by this Court wherein this Honorable Court construes the Social Security Act, Sec. 223(b), to contain the implied exception to the limitations on retroactive awards of disability benefits such that the limitation therein is stricken as inapplicable to Ida B. Yeiter, and further prays for an entry of order by this Court directing the Secretary to award disability benefits to the plaintiff retroactive through November 14, 1972.

COUNT II

18. That plaintiff adopts as if fully set forth herein Paragraphs 1 through 17 above.

19. That to the extent Congress has intended Sec. 223(b) of the Social Security Act to apply, in the same manner, to all individuals otherwise eligible for disability benefits, including those capable of applying for disability benefits or directing others to apply for disability benefits, together with those who are incapable of applying for disability benefits in their own behalf or directing others to apply for disability benefits in their behalf, Congress created a statutory scheme whose purpose and effect is to produce unequal results in treatment and condition with respect to those persons mentally incapacitated, to the detriment of Ida B. Yeiter, violating her right to due process and equal protection of the law as guaranteed to plaintiff under the Fifth Amendment of the United States Constitution.

20. That to the extent that Congress has presumed all disabled individuals to be capable of either applying for disability benefits on their own behalf or directing others to apply for disability benefits on their behalf, Congress has made a presumption neither necessarily true nor universally true, and this irrebuttable presumption violates the constitutional rights guaranteed Ida B. Yeiter as guaranteed under the Fifth Amendment of the United States Constitution.

21. That the Social Security Administration's construction of Sec. 223(b) of the Social Security Act, if correct, denies Ida B. Yeiter equal protection of the law as guaranteed to her under the Fifth Amendment of the United States Constitution.

22. That such unequal treatment otherwise violates Ida B. Yeiter's procedural and substantive due process

rights guaranteed to her under the Fifth Amendment of the United States Constitution.

WHEREFORE, plaintiff Ida B. Yeiter seeks judicial review by this Court and further requests this Court to find Sec. 223(b) of the Social Security Act to be unconstitutional either on its face or as applied to Ida B. Yeiter under the factual circumstances set forth herein above, and further prays for an entry of order by this Court directing the Secretary to award disability benefits retroactive through November 14, 1972.

BUCHANAN & BOS
Attorneys for Plaintiff

DATED: January 3, 1985

By: /s/ M. J. Stephen Fox
M.J. Stephen Fox (P-32456)
Business Address:
Sixth Floor Frey Building
Grand Rapids, MI 49503
(616) 458-1224

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DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
OFFICE OF HEARINGS AND APPEALS

ORDER
OF DISMISSAL

IN THE CASE OF:	CLAIM FOR:
Ida B. Yeiter	Period of Disability and Disability Insurance Benefits
(Claimant)	
	364-16-1745
	(Social Security Number)

The claimant, through her attorney, related on her Request for Hearing dated August 15, 1984, that her constitutional rights had been violated and that the Social Security Administration's statutory construction was incorrect under the doctrine of equitable construction. By letter dated September 24, 1984, the attorney requested that the expedited appeals process be invoked. Subsequently, the Office of the Chief Administrative Law Judge for the Office of Hearings and Appeals determined that the criteria for use of the expedited appeal procedure were met and a formal agreement was prepared. The claimant, by and through her guardian, Samuel Yeiter, and her attorney signed the agreement on November 5, 1984. On November 7, 1984, Paul Rosenthal, Acting Chief Administrative Law Judge, signed the agreement as authorized representative of the Social Security Administration.

As defined in Regulation 404.927 of the Social Security Regulations, after an expedited appeals process agreement is signed, the remaining steps of the Administrative review process need not be completed. Instead, the claimant may file an action in a federal district court within 60 days after the date the agreement is signed by the Social Security Administration representative.

The request for the expedited appeals process and the subsequent signing of the agreement constitute a request for withdrawal of the claimant's Request for Hearing filed on August 15, 1984. Regulation 404.957 provides, in pertinent part, that an Administrative Law Judge may dismiss a Request for Hearing if a party to the hearing asks to withdraw his or her request.

Accordingly, in accordance with Regulation 404.957, the Administrative Law Judge dismisses the claimant's Request for Hearing filed on August 15, 1984.

/s/ William E. Decker
Administrative Law Judge

November 27, 1984
Date

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

IDA YEITER,

Plaintiff, No. G85-5 CA CA

v. Honorable
Wendell A. Miles

SECRETARY OF HEALTH
AND HUMAN SERVICES, ANSWER

Defendant.
_____/

Now comes the Defendant, Secretary of Health and Human Services, by its attorneys, John A. Smietanka, United States Attorney for the Western District of Michigan, and Martin F. Palus, Assistant United States Attorney, and in answer to the Complaint, says as follows:

1. Defendant admits the allegations contained in paragraphs 1 through 9.

2. Except to admit that Ida B. Yeiter did not apply for Social Security disability benefits on her own behalf, the defendant is without knowledge or information suffi-

cient to form a belief as to the truth of the averments of paragraph 10.

3. Paragraphs 11 and 12 consist of plaintiff's argument or characterization of her action, to which no responsive pleading is required; to the extent a response may be deemed required, defendant denies the averments of paragraphs 11 and 12.

4. The defendant admits the averments of paragraph 13 and adopts by reference the responses to paragraphs 1 through 12.

5. Defendant admits the allegations contained in paragraph 14.

6. Paragraphs 15 through 17 consist of plaintiff's argument or characterization of her action, to which no responsive pleading is required; to the extent a response may be deemed required, defendant denies the averments of paragraphs 15 through 17.

7. The defendant admits the averments of paragraph 18 and adopts by reference the responses to paragraphs 1 through 17.

8. Paragraphs 19 through 22 consist of plaintiff's argument or characterization of her action, to which no responsive pleading is required; to the extent a response may be deemed required, defendant denies the averments of paragraphs 19 through 22.

9. Defendant states that the findings of fact of the Secretary of Health and Human Services are supported by substantial evidence and are conclusive.

10. Defendant states that in accordance with section 205(g) of the Social Security Act, 42 U.S.C. 405(g), De-

fendant files as part of the Answer a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.

WHEREFORE, Defendant prays for judgment dismissing the Complaint with costs and disbursements and for judgment in accordance with section 205(g) of the Social Security Act, 42 U.S.C. 405(g), affirming her decision.

Respectfully submitted,

JOHN A. SMIETANKA
United States Attorney

/s/ MARTIN F. PALUS
Assistant United States Attorney

Dated: 5/9/85